

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: April 16, 2013

***Consideration and Approval of Amendment to Regulations for the Bond Program
 Pertaining to Small Business Assistance Fund (SBAF) Fees***

Prepared by: *Andrea Escobar*

Summary. Staff requests Board approval to begin the emergency rulemaking process and file regulations to amend and add section (e) to § 8035 of the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations pertaining to a temporary suspension of the Small Business Assistance Fund (SBAF) fees for large businesses that pay into SBAF. Staff anticipates that this will be a temporary fee waiver until the bond market improves. Upon approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. During the late 1970’s and early 1980’s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax-exempt bonds. The SBA discontinued the program in 1981, which left small businesses inadequate resources for securing cost-effective tax-exempt financing.

In 1985, the SBAF was established to fill a void from the discontinuation of the SBA program, and to offset certain costs of issuance and letter of credit fees associated with the issuance of tax-exempt bonds issued on behalf of small businesses. A small business is defined as 500 employees or less. Large businesses began paying into SBAF to support CPCFA programs that benefit small businesses.

Currently the fee to large businesses is up to .0066 of the face value of the bonds issued. Small businesses can receive up to \$205,000 towards their costs of bond issuance, depending on the size of the transaction.

SBAF funds have helped small businesses through other CPCFA programs. From 1994 to 2010 about \$35 million of the SBAF funds were used as the exclusive funding source for the CalCAP program that benefits small businesses.

The proposed regulations would temporarily waive the fees that large businesses pay into SBAF.

Need for Temporary Regulation Change. Business investment in California using tax-exempt bonds has declined noticeably during the recent economic downturn. As a result, Private Activity Bond (PAB) allocation has gone unused and CPCFA has received unused allocation as Carryforward Allocation. CPCFA currently has \$2.9 billion in Carryforward Allocation available and in order to utilize the allocation before it expires, CPCFA needs both small and large businesses to issue PABs. Available allocation is listed in the table below.

Total 2010 – 2012 Available Carryforward Allocation Available	<u>\$2,958,017,653</u>
Solid Waste Disposal	\$1,578,737,825
Sewage Facilities	\$282,518,769
Water Furnishing	\$1,096,761,059

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The SBAF fund currently has a balance of approximately \$15,638,000. The temporary fee waiver for large businesses will not affect the SBAF assistance given to small businesses. During the last five years, fifteen large businesses have paid into the fund and all small businesses requesting SBAF assistance have received it. The table below outlines the number of companies and amounts paid into and out of the SBAF account over the past five years.

	2008	2009	2010	2011	2012	Total
Small businesses that received SBAF assistance	6 companies received \$1,324,960	0	4 companies received \$699,840	3 companies received \$423,240	5 companies received \$640,224	18 companies received \$3,088,264
Small businesses that did not receive SBAF	0	3 companies	5 companies	2 companies	3 companies	13 companies
Large businesses that paid into SBAF	5 companies paid \$1,176,200	2 companies paid \$653,400	7 companies paid \$1,137,194	0	1 company paid \$113,200	15 companies paid \$3,079,994

CPCFA staff anticipates that the temporary fee waiver will entice large businesses to issue PABs by noticeably reducing a portion of the cost of issuance. The fee reduction could also serve as an incentive for national companies to focus investment in California while their fees are lower.

Regulation Change. Add Section 8035(e) of the regulations which will read as follows (change is underlined):

§ Section 8035(e).The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until June 30, 2015. In the case of refunding bonds and conversion bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before June 30, 2015.

Regulatory Process. After Authority approval to amend and extend the existing regulations, emergency and regular rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process. The regular rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the

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regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

April 16, 2013	The Board approves the emergency regulations.
April 16, 2013	5-day Notice posted on CPCFA website and sent to Interested Parties.
April 23, 2013	Emergency regulations filed with OAL.
April 29, 2013	Public comment period ends.
May 06, 2013	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
November 31, 2013	Emergency regulations expire.

Permanent Regulations

June 4, 2013	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
June 14, 2013	OAL publishes Notice and 45-day public comment period begins.
July 29, 2013	Public comment period regarding proposed regulations ends.
July 30, 2013	Deliver permanent regulation package to OAL for 30-day review*
July 30, 2013	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

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August 2, 2013	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
August 17, 2012	15-day comment period ends.
August 20, 2013	Deliver permanent regulation package to OAL for 30-day review.
September 18, 2013	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations concerning a temporary waiver of SBAF fees for the Bond Program and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to CPCFA bond program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER
ACTIONS RELATED THERETO PERTAINING TO THE SMALL BUSINESS
ASSISTANCE FUND (SBAF) FEES FOR THE BOND PROGRAM**

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WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the April 16, 2013 meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8035 Small Business Assistance Fund Fees

(e) The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until June 30, 2015. In the case of refunding bonds and conversion bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before June 30, 2015.

Note: Proposed changes are underlined.